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8 Attorneys for Plaintiff
WEBCOR CONSTRUCTION, INC. dba
WEBCOR BUILDERS
9

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA for the use and
13 benefit of WEBCOR CONSTRUCTION, INC. dba
WEBCOR BUILDERS, and WEBCOR
14 CONSTRUCTION, INC. dba WEBCOR
BUILDERS,

15 Plaintiffs,

16 vs.

17 DICK/MORGANTI, a joint venture; DICK
18 CORPORATION; THE MORGANTI GROUP;
AMERICAN CASUALTY COMPANY OF
19 READING, PENNSYLVANIA; NATIONAL
UNION FIRE INSURANCE COMPANY OF
20 PITTSBURGH, PA; and DOES 1-10, inclusive,

21 Defendants.

22 AND RELATED THIRD-PARTY ACTIONS AND
23 CROSS-ACTIONS
24

CASE NO.: 3:07-CV-02564-CRB

**DECLARATION OF KENNETH G. JONES
IN SUPPORT OF WEBCOR'S MOTION
TO LIFT STAY OF PROCEEDINGS**

Date: August 29, 2008
Time: 10:00 a.m.
Dept.: Courtroom 8
Judge: Hon. Charles R. Breyer

25 I, KENNETH G. JONES, DECLARE:

26 1. I am an attorney at law duly licensed to practice before all Courts of the State of
27 California and am a partner at Bowles & Verna LLP, attorneys for plaintiff Webcor Construction Inc,
28

1 dba Webcor Builders ("Webcor"), in the above action. As such, I have personal knowledge of the facts
 2 set forth herein and if called as a witness, could and would competently testify thereto.

3 2. In 2005, pursuant to the claims procedures set forth in the parties' subcontract, Webcor
 4 prepared and submitted to several change order requests ("COR"). Webcor submitted COR No. 60 on
 5 July 29, 2005 and submitted COR Nos. 61 through 65 on October 31, 2005. DM initially forwarded
 6 COR 60 to the GSA for consideration but refused to take any action on the remaining COR Nos. 61
 7 through 65.

8 3. About fifteen months after Webcor submitted change order request ("COR") No. 60 to
 9 defendant Dick/Morganti ("DM"), on or about October 27, 2006, DM's counsel, Joel Heusinger
 10 notified me that the GSA denied responsibility for COR No. 60.

11 4. Upon receiving notice that the GSA had denied Webcor's COR No. 60, I demanded that
 12 Mr. Heusinger immediately avail DM and Webcor of the dispute resolution procedures in both the
 13 Prime Contract and Webcor Subcontract and insisted that DM immediately seek a Contracting Officer's
 14 Decision. This demand was rejected by DM.

15 5. In May 2007, after pressing DM to submit COR No. 60 to the GSA for a Contracting
 16 Officer's Decision to no avail, Webcor was forced to pursue its rights through filing the instant action.

17 6. Shortly thereafter, on June 13, 2007, DM agreed to pass COR No. 60 through to the
 18 GSA for a Contracting Officer's Decision. DM continued to refuse to pass through to the GSA
 19 Webcor's COR Nos. 61 through 65.

20 7. On October 19, 2007, this Court issued an Order staying all proceedings related to
 21 Webcor's claims, including COR Nos. 60 through 65, in order to determine if those claims related to
 22 the "global" claim DM anticipated filing and, at DM's request, to allow DM the opportunity to pursue
 23 claims with the GSA directly.

24 8. On October 11, 2007, the GSA informed DM that it needed until April 11, 2008 to issue
 25 a Contracting Officer's Decision as to Webcor's COR No. 60. Attached hereto as Exhibit "A" is an
 26 October 23, 2007 letter to me from DM's general counsel, Michael T. Ambroso, which attaches the
 27 GSA's request for additional time.

28 //

1 9. On December 19, 2007, after a further status conference, this Court lifted the stay of
 2 proceedings as to COR Nos. 63, 64 and 65 but reasserted the conditional stay as to COR Nos. 60, 61
 3 and 62 in light of DM's recently filed "global" claim and its representation to the Court that it would
 4 diligently and actively pursue claims, including Webcor's, with the GSA.

5 10. On January 25, 2008, I met with Mr. Heusinger and Ray Buddie, counsel for DM, in San
 6 Francisco to discuss the status of Webcor's claims and the Contracting Officer's request for additional
 7 time and documents in responding to Webcor's COR No. 60. Mr. Heusinger agreed, and assured me,
 8 that if the Contracting Officer did anything other than accept Webcor's certified claims by the mid-
 9 April deadline promised by the GSA, that DM would immediately appeal the Contracting Officer's
 10 decision and seek an immediate appeal of Webcor's CORs. Mr. Heusinger also agreed that the
 11 Contracting Officer's request for additional information from both DM and Webcor was not made in
 12 good faith and was an additional stall tactic.

13 11. On February 8, 2008, DM certified and passed-through to the GSA Webcor COR Nos.
 14 61 and 62. Pursuant to the terms of the Contracts Dispute Act, 41 U.S.C.S. § 605(c)(2), a decision, or a
 15 request for further time, was to be made within sixty (60) days thereof, which would have expired on or
 16 about April 14, 2008. To date, Webcor has received no communication from DM as to whether the
 17 GSA has rejected COR Nos. 61 and 62 or if it has requested further time to render a decision.

18 12. April 11, 2008 has come and gone and Webcor has received no communication from
 19 DM as to whether the GSA issued a Contracting Officer's Decision as to Webcor's COR No. 60.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing is
 21 true and correct. Executed this 24th day of July, 2008, at Walnut Creek, California.

22
 23 By: 

24 KENNETH G. JONES
 25
 26
 27
 28



Building Excellence for Over 80 Years!

*Michael T. Ambroso
Assistant General Counsel &
Assistant Secretary*

October 23, 2007

VIA FACSIMILE #925-935-0371
and First Class Mail
Kenneth Jones, Esq.
Bowles & Verna, LLP
2121 N. California Blvd., Suite 875
Walnut Creek, CA 94596


RE: San Francisco Federal Building

Dear Ken:

Attached please find a letter from the GSA's Contracting Officer relating to the GSA's review of the rebar congestion/concrete finish claim previously submitted by Dick/Morganti on behalf of Webcor. The letter is self explanatory, but if you have any questions, please contact me.

Sincerely,

DICK CORPORATION


Michael T. Ambroso

MTA/lsn
enclosure

cc: Joel Heusinger, Esq.
Woods & Aitken, LLP
Cornhusker Plaza
301 South 13th Street - Suite 500
Lincoln, NE 68508-2578
Ray Buddie, Esq.
Peckar & Abramson, P.C.
455 Market Street - 21st Floor
San Francisco, CA 94105



October 11, 2007

Dan Martin
Dick/Morganti
P.O. Box 10896
Pittsburg, PA 15236-0896

Regarding: New San Francisco Federal Office Building
GSA Project No. NCA00049
GSA Contract No. GS-09P-02-KTC-0002

Subject: Webcor Construction COR 60

Dear Mr. Martin,

The General Services Administration requires additional time in which to review and consider the claim for equitable adjustment (pertaining to certain Webcor issues) that Dick/Morganti submitted on or about June 13, 2007. We expect to issue a final decision by April 11, 2008. Under separate cover we will be sending a letter requesting additional information regarding this claim.

Sincerely,

A handwritten signature in black ink, appearing to read "Shelita Harper", with a stylized flourish at the end.

Shelita Harper
Contracting Officer
Property Development Division, 9PCE

cc:

Meg Haggerty, 9L
Maria Ciprazo, GSA
Monsy Agleham, GSA
David Proctor, Hunt
File